

The Examination of a Witness in Civil Proceeding

RESUMÉ

The theme of my paper is an examination of a witness in civil proceedings. This institute is quite common in trial by court, during the process of evidence. During the process of evidence past events are being reconstructed and means of evidence, which number isn't definite, are used. One of the means of evidence, quite a frequent one, is the mentioned examination of a witness.

I chose this theme because of the branch of law which it refers to and also because this institute appears to be multispecial, as it is applied not only in civil law, but also in other fields such as psychology or sociology. Study of this issue therefore enabled me to look into these branches and so in my paper I tried to partly cover other fields as well.

At the beginning of my paper I deal with development of this means of evidence, as its' usage was common long time ago. This institute was highly regarded in the old Roman law because of its' verballity. Subsequently, the written form predominated and therefore the testimony of a witness was not of such significance as documents. Over time when verbal testimony was more often used, it was again brought to the fore and by gradual historical development it gained its' current form.

The witness person itself is the focal issue of the following chapter, which is about the constituency of people who can give testimony. In the Czech legal system there are no limitations, every individual has the competency of a witness. And moreover – every individual has the obligation to testify, including the duty to come to the court personally and to appear as a witness. However, there exist certain exemptions to this rule, when some individuals have privileges and immunity - in such cases there is no obligation to testify. Furthermore, the examination of individuals, who could breach their confidentiality obligation imposed by law, is forbidden. The last case when a person is not obliged to testify is presumed by the Declaration of basic rights and freedoms – everyone may withhold from testifying if that would bring about criminal prosecution to himself/herself or to the next of kin ("next of kin" persons are defined by the Civil Code).

In the following paragraphs I discuss the course of evidence, i.e. the course of examination of witness. Examination shall always be carried out within the trial of the competent court, but again there are some exemptions. To such exemptions belongs the possibility to examine witness by another than the competent court, i.e. by a requested court or the examination is carried out by the presiding judge outside trial. The examination may be carried out in a foreign country – in such case further co-operation depends on whether it is an EU state or not.

Specific approach may be noticeable in different people having the statute of a witness. Very precise approach will be needed for people who have competency of a witness, but at the same time there are certain obstacles, physical or psychical, which require individual treatment (children, mentally ill, elderly people, the sick, the dying etc.) These specifics are furthermore reflected in the phase of evaluation of the testimony, its' credibility respectively.

In next chapter I shortly describe record of the testimony of a witness. The testimony is recorded in the trial record and usually is recorded the constituent part. The perspective legislative regulation, however, expect the trail to be recorded and kept on data media (DVD, CD), whereby the work of judges will be easier and at the same time inaccuracies and distortion of information will be corrected.

In the following chapter I discuss another important phase - evaluation of testimony. Within this process, the testimony is evaluated from the legality point of view and importance/relevance for deciding the case. Finally, there is a free evaluation, when veracity and credibility (distinction between general and specific) are being evaluated. The term “general credibility” is connected with the witness, whether he/she is credible as a person, i.e. whether this person is in appropriate psychical condition for perception, remembering and recollection of past events. On the other hand “specific credibility” is connected to the testimony itself – whether the testimony is true and to what extent it corresponds with reality. In the final phase the testimony is compared with other ascertained evidence.

Giving testimony has also a financial impact on the witness and therefore there exists an institute of witness's fee, providing the witness with compensation of necessary cash

expenses and compensation of loss of earnings. However, these claims have to be proved by the witness. When these claims are admitted, they are paid to the witness from the state budget.

The last chapter describes the process of evidence in the proceedings on remedial measures. Decision on merits may have defects, legal or factual, and thus there must be a possibility of review. In this chapter I discuss to what extent the process of evidence may be carried out at the court, at which is held the proceedings on remedial measures.

At the close it may be summarized the testimony is one of the more complex means of evidence. It is not possible to give a general and complex instruction how to proceed with it. There are certainly high expectations of the judge, as on his/hers shoulders lies the largest portion of the responsibility, i.e. responsibility for correct and precise carrying out of the hearing a witness and subsequent evaluation of given testimony in the context of other evidence.

In fine it may be stated this institute is under continuous development, which goes hand in hand with technology development. Technology helps to speed up and simplify proceedings and to correct errors; from recent time is worth mentioning the record on data media or use of videoconferences for cross-border law suits. It is beyond doubt further development on this field is ahead of us.